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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,751	01/23/2004	Allan Witt	032016-0127	7667

26371 7590 09/08/2004

FOLEY & LARDNER
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EXAMINER

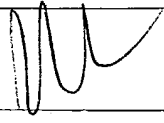
CAMPBELL, THOR S

ART UNIT PAPER NUMBER

3742

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/763,751	Applicant(s) WITT ET AL. 	
	Examiner Thor S. Campbell	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/23/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 23-26 rejected under 35 U.S.C. 102(b) as being anticipated by Fisher et al. (US 3931494).

Fisher discloses a dish heated from below by an electric heater using direct current.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 7, 14-17, 19, 20-27, 29-31, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Braun, Jr. (US 4794228).

Braun discloses the claimed invention including *inter alia* a serving dish, a power source, a heater, and a cart. Braun does not explicitly disclose the use of a fuel cell or battery to power the heating element or the particular temperatures to which the food serving dishes are heated. it has been held that the recitation that an element is "configured to" perform a function is not a positive limitation but only requires the ability

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to so perform. It does not constitute a limitation in any patentable sense. Braun discloses the claimed invention except for the use of a battery or fuel cell to power the electric heating element. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a battery or fuel cell to the device of Braun, Jr., since it has been held that making an old device portable or movable without producing any new and unexpected result involves only routine skill in the art and it is generally well known in the art to make a heating device portable by providing a battery in order to free the user from the encumbrances of electric power wires. (See Fisher as evidence of the use of batteries to make a heating device portable.)

Claims 1, 5, 8-13, 14, 18, 27-28, 30-32, 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruno et al. (US 5413032) in view of Welch (US 4237368).

Bruno disclose the claimed invention except the use of quartz as the surface material. Welch discloses the use of quartz as a surface material heated by a heating element. It would have been obvious to one of ordinary skill in the art to use the quartz of Welch in the device of Bruno in order to more readily pass the infrared energy from the heater through the counter to the food being heated.

Claims 38-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Braun, Jr. in view of Simic-Glavaski et al. (US 6528768).

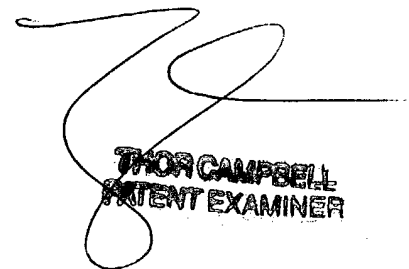
Braun discloses the invention as described above except the use of photovoltaic power. Simic-Glavaski discloses using a photovoltaic cell to power a food treating dish. It would have been obvious to one of ordinary skill in the art to modify the device of Braun to use a portable power supply like the photovoltaic cell of Simic-Glavaski, in order to make the serving cart more portable.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thor S. Campbell whose telephone number is 703-306-9042. The examiner can normally be reached on Tue-Fri 5:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 703-305-5766. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



THOR CAMPBELL
PATENT EXAMINER